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## *Law Enforcement Information Gathering in the Emergency Department*

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The American College of Emergency Physicians (ACEP) believes that emergency physicians have a fundamental professional responsibility to protect the confidentiality of their patients' personal health information. Federal and state laws, including the federal health information privacy regulations implemented under the Health Insurance Portability and Accountability Act (HIPAA), articulate and reinforce this responsibility.

ACEP recognizes that law enforcement officials perform valuable functions in the emergency department (ED), and that one of these functions is investigation of criminal acts. As part of these investigations, law enforcement officials may request personal health information gathered in the ED. Emergency physicians may honor these requests only under the following circumstances:

1. The patient consents to release of the requested personal health information to law enforcement officers, or
2. Applicable laws or regulations mandate the reporting of the requested personal health information to law enforcement officers, or
3. Law enforcement officers produce a subpoena or other court order requiring release of the requested information to them.

Law enforcement officers may, in some situations, present search warrants or other court orders as grounds for requesting or directing that emergency physicians perform physical examinations, collect physical evidence, perform diagnostic tests, or conduct body cavity searches on ED patients who refuse these interventions. These situations present emergency physicians with difficult conflicts between obligations to respect patients' refusals of treatment, to promote trust in the therapeutic relationship, and to protect patients from harm, on the one hand, and obligations to obey legal authorities and to carry out socially imposed mandates to promote public health and public safety, on the other hand. ACEP believes that emergency physicians must make considered judgments regarding which set of obligations is more compelling in these specific situations. Emergency

physicians may conscientiously refuse to carry out or comply with legal orders that violate the rights or jeopardize the welfare of their patients, recognizing that there may be legal repercussions for these decisions. These repercussions may include contempt of court or malpractice claims.

In their interactions with ED patients, law enforcement officers may use video or audio recording devices. These recordings may include interaction or communication between ED patients and physicians or other ED staff only with the consent of all parties.

Law enforcement information gathering activities in the ED should not interfere with essential patient care.